



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

March 26, 2003

MEMORANDUM FOR DEPUTY CHIEF OF STAFF, G-1

SUBJECT: Limited Management Headquarters Exemption

Reference, Memorandum, Deputy Chief of Staff (DCS), G-1, subject: Third Wave Exemption Requests, January 15, 2002.

Function. The issue of exempting the management headquarters has arisen in several exemption requests. This determination is directed to the DCS, G-1 as the functional proponent for the management headquarters. The scope of this determination applies to management headquarters activities, some exclusions apply to field operating agencies, staff support agencies, and direct reporting units, which will be identified in the enclosure. The definition of management headquarters for purposes of compiling the Inventory of Commercial and Inherently Governmental Activities is different from the definition of management headquarters for other purposes. The military and civilian career progression issues are dealt with in a separate determination.

Decision. A relatively small cadre of senior decision makers exercising substantial discretionary decision making authority in a way that ultimately binds the Government to take a course of action or not take a course of action within a functional area in the management headquarters are inherently Governmental. Not every functional area located in the management headquarters involves the exercise of such discretion. For example, functions which are highly circumscribed by laws, rules and regulations from higher authority, such as records management, are not inherently Governmental. One such example is in the case of records management, substantial discretion exists in the Office of Information and Regulatory Affairs in the Office of Management and Budget, not within the Army. Other examples are commercial functions, advisory functions, audit, cost and economic analysis and similar analytical functions that normally are not inherently Governmental even when performed in a management headquarters environment.

Additionally, though normally providing advice is not inherently Governmental, there may be circumstances where those not in the decision making capacity, because of such factors as their expertise, "agenda setting" responsibilities or their framing of issues that need to be addressed are so integral to the decision making process that they are also included in this inherently Governmental exemption.

Another subset of inherently Governmental decision makers should be particular military personnel provided their decision making relies on their military unique

knowledge and skills that can only be obtained from recent experience in the operating forces in order to fulfill the Goldwater-Nichols Act's intent of ensuring independent military judgment is exercised in arriving at certain kinds of decisions. Within a management headquarters, the Army's core war-fighting competencies are arguably limited to such positions and functions.

It is acknowledged that a substantial number of military are assigned to the Army headquarters that meet none of the above criteria, or at least, do not meet the criteria that stipulates the function cannot be adequately performed without military unique knowledge and skills. For example, military in front offices who are performing administrative support and protocol functions, or executive control and communications functions can not be supported under the above criteria but exist in the headquarters only as a matter of custom and tradition. Military performing such administrative functions, or working on business transformation or in the programming and budget process are presumed not to meet the criteria for exemption and should be scrutinized in any Third Wave implementation plan for conversion. While I have the discretion to exempt such military on grounds of custom and tradition, I will not do so at this time, but subject them to further review in the implementation plan process. The limitations and scope of this decision are discussed in detail below.

Further, where an official making inherently Governmental decisions in a management headquarters is required to supervise in order to provide for the effective performance of an activity in support of that decision maker, there is a basis for exempting that activity in order to avoid an inappropriate personal services contract, regardless if the supervised individuals are subordinates to the inherently Governmental decision maker or provide advisory or clerical support to that organization. It is assumed that severable commercial type activities, such as information technology support, or general administrative support not provided by executive secretaries, can be performed on a contractual basis without raising the personal services issue. To assure consistency between our actual practice and the basis of this personal services exemption, implementation plans for the management headquarters should identify existing contract support that meets the criteria of the exemption, and propose divesting that support with the result that an in-house person will perform that work subject to the constraints imposed by management headquarters ceilings.

In addition, there are certain positions and functions identified in Title 10 that must be performed in the Army Staff and Secretariat and are also to be considered as inherently Governmental. These positions are all subject to overall Congressional limitations on the size of management headquarters and the size of the Army Secretariat and Army Staff.

Aside from the aforementioned inherently Governmental positions and functions, positions and functions requiring military-unique knowledge and skills, or are required to avoid a personal services arrangement from arising, or those positions and functions that are required to be performed and located in the Army headquarters by Title 10, all remaining positions and functions assigned to management headquarters exist as a matter of management discretion and may be divested, transferred or competed.

The enclosure contains instructions on how to implement this decision in the Inventory of Commercial and Inherently Governmental Activities (including the Federal Activities Inventory Reform Act Inventory), to be developed by DCS, G-1 in coordination with our responsible staff officers. This enclosure special describes which functions are included in which ones are excluded from this exemption.

Requestors Positions on Issues. Several functional officials have requested the management headquarters be exempted because they believe it is inherently Governmental, or that personal services arrangements may arise from contracting functions in the management headquarters, or for concerns with ensuring civilian and military career progression. On the other hand, none have suggested that existing contracts in support of the management headquarters be divested because of personal services concerns, that any military in the management headquarters be converted to in-house civilian performance, or that any function performed by the management headquarters be divested or transferred.

Standard of review. The senior HQDA functional official for a function must describe and substantiate specifically how preparation and implementation of a Third Wave implementation plan for each course of action poses substantial and specific risks to a core war-fighting mission of the Army (i.e., a core competency) or violates a statutory requirement affecting a function. The following are risk factors to evaluate this request: force management risk; operational risk; future challenges; and institutional risk. How these criteria are applied may vary based on each course of action evaluated (i.e., A-76; alternatives to A-76; military conversions; transfer to another agency; divestiture). Therefore, exemption requests and decisions must assess the potentially adverse impact of each course of action.

Core Competency Relevant to Risk Issue. There are significant and varying portions of organizations such as DCS, G-1, G-2, G-3, G-4, G-6 and G-8, as well as the Assistant Secretaries and Executive Office of Headquarters that comprise that portion of the management headquarters function that directly relate to command, control and oversight of the six recognized core competencies of the Army, as provided for in Army Field Manual 1 and the Army Plan: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. There are, however, significant aspects of these

same organizations that do not cleanly relate to command, control and oversight over core Army war-fighting competencies, such as, the records management function in DCS, G-1. Accordingly, how the risk criteria is relevant to the various management headquarters functions will vary across the different headquarters organizations and should be addressed in the individual implementation plans or sourcing decisions to determine how it affects the Army's war-fighting competencies.

Statutory Requirements Relevant to Risk Issue. Various provisions of Chapter 303, Title 10 require that certain positions and functions exist in the Army Secretariat and Army Staff though they may be subject to overall Congressional limitations on the size of Army headquarters and management headquarters throughout the Army. These include the Secretary of the Army, the Under Secretary of the Army, Assistant Secretaries of the Army, General Counsel, Administrative Assistant to Secretary of the Army, Inspector General, Army Reserve Forces Policy Committee, Chief of Staff, Vice Chief of Staff, Assistant Chiefs of Staff, Chief of Engineers, Surgeon General, Judge Advocate General, Chief of Chaplains, Chief of Army Reserve and functions such as acquisition, auditing, financial management and comptroller, information management, legislative affairs, and public affairs. Title 5, U.S. Code, Section 3109 bars the use of personal services contracts, subject to a limited exception for advisory and assistance contracts, and further stipulates that such contractual arrangements not be used to avoid personnel limitations (such as the management headquarters limitation). Other Titles in the U.S. Code impose generalized requirements on all executive agencies that require the appointments of certain officials within the Government by the head of an executive agency, such as the Chief Financial Officer statutes in Title 31, and the Chief Information Officer under the Clinger-Cohen Act in Title 44. In addition, portions of Title 10 provide a strong basis for military performance of certain functions needed to ensure independent military judgment is provided to support executive branch decision-making, and some even mandate military performance of certain functions and positions. These functions and positions cannot be divested, transferred, or converted from military to civilian performance when specifically prohibited.

Inherently Governmental Determination Relevant to Outsourcing Issue. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government. An inherently Governmental function is so intimately related to the public interest as to require performance by Federal Government employees. It does not normally include providing advice to Government officials.

However, while providing advice to Government officials or performing the functions listed in Appendix B of Office of Federal Procurement Policy Letter 92-1 are

normally not inherently Governmental, the level of contractual support in specific circumstances may approach being inherently Governmental either because of the way in which the contractor performs the contract or the manner in which the Government administers the contract. However, because no functional principal has identified for divestiture contractor support that raises this issue, the record before me compels me not to recognize this rationale as a basis for characterizing more of the various Army management headquarters as inherently Governmental.

Statutes Relevant to Sourcing Decision. Various provisions of Chapter 303, Title 10 require certain positions and functions exist in the Army Secretariat and Army Staff, subject to overall Congressional limitations on the size of Army headquarters and management headquarters throughout the Army. These include the Secretary of the Army, the Under Secretary of the Army, Assistant Secretaries of the Army, General Counsel, Administrative Assistant to Secretary of the Army, Inspector General, Army Reserve Forces Policy Committee, Chief of Staff, Vice Chief of Staff, Assistant Chiefs of Staff, Chief of Engineers, Surgeon General, Judge Advocate General, Chief of Chaplains, Chief of Army Reserve and functions such as acquisition, auditing, financial management and comptroller, information management, legislative affairs, and public affairs. Title 5, U.S. Code, Section 3109 bars the use of personal services contracts, subject to a limited exception for advisory and assistance contracts, and further stipulates that such contractual arrangements not be used to avoid personnel limitations (such as the management headquarters limitation). Other Titles in the U.S. Code impose generalized requirements on all executive agencies that require the appointments of certain officials within the Government by the head of an executive agency, such as the Chief Financial Officer statutes in Title 31, and the Chief Information Officer under the Clinger-Cohen Act in Title 44. Apart from the aforementioned provisions, there are no statutes identified in the record that mandate that Government officials or members of the military perform the management headquarters functions included within this determination. Other functions in the management headquarters that are not inherently Governmental or otherwise exempted are subject to the standard statutory processes (10 U.S. Code, Section 2461 and Section 8014 of the annual appropriations acts) that require public-private competition in all but a few circumstances, such as the exceptions for functions with 10 or fewer civilian employees and for use of the preferential procurement programs (unless the functions are solely performed by military).

Personal Services. Where an official making inherently Governmental decisions in a management headquarters is required to supervise in order to provide for the effective performance of an activity in support of that decision maker, there is a basis for exempting that activity in order to avoid an inappropriate personal services contract regardless if the supervised individuals are subordinates to the inherently Governmental decision maker or provide advisory or clerical support. It is assumed that

severable commercial type activities, such as information technology support can be performed on a contractual basis without raising this personal services issue. To assure consistency between our actual practice and the basis of the personal services exemption, implementation plans for the management headquarters should identify existing contract support that meets the criteria of the exemption, and propose divesting that support with the result that an in-house person will perform that work subject to the constraints imposed by management headquarters ceilings.

Conflicts of Interest. No conflict of interest issues have been substantiated in the referenced exemption requests. I am open to addressing this issue in the context of management headquarters functions at a later time, if warranted.

Military Conversions. Included in the designation of inherently Governmental decision makers should be military personnel, provided their decision making requires military unique knowledge and skills that can only be obtained from recent experience in the operating forces in order to fulfill the Goldwater-Nichols Act intent of ensuring independent military judgment is exercised for arriving at certain kinds of decisions. Within a management headquarters, the Army's core war-fighting competencies are arguably limited to such positions and functions.

In general, military performance of a function in the infrastructure turns on whether adequate performance of the function in the infrastructure requires military-unique knowledge and skills. According to Office of Secretary of Defense (OSD) Guidance for compiling the Inventory of Commercial and Inherently Governmental Activities, military-unique knowledge and experience can only be derived from *recent* first-hand involvement in military activities – i.e., through commanding military forces or conducting or participating in military operations or exercises. This knowledge and experience must be more substantial than familiarity with doctrine, tactics, operations, or regulations; capabilities that can be developed by civilians; or, advice military retirees can provide based on their knowledge and experiences. However, a minimal cadre of military not otherwise justified in military unique knowledge and skills grounds, can be justified on maintaining military esprit de corps grounds pursuant to the OSD Guidance for compiling the Inventory. However, the extensive application of an exemption on the grounds of military esprit de corps in a management headquarters, particularly at the Army management headquarters level, is subject to

significant levels of scrutiny, and to be applied on an exception basis.

A handwritten signature in black ink, appearing to read "Reginald J. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Reginald J. Brown
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosures

CODING RULES for Management Headquarters

1. HQ Units not specifically covered by a separate exemption decision

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| a. General Officers | F – Military Unique Skills and Knowledge |
| b. Military O6 and higher in branches listed exempt from conversion | F – Military Unique Skills and Knowledge |
| c. Military O6 and higher in branches NOT listed exempt from conversion | E – Civilian Decision and Control |
| d. Civilian GS-15 and higher | E – Civilian Decision and Control |
| e. All other military | P – Pending Restructuring |
| f. All other civilians | L – Protected by Law, Statute, Treaty or Agreement |

Units covered by exemption:

1. All MACOM Headquarters
2. All Secretariat and ARSTAFF offices except OIG, OPA, OGC, CIO, TAG, TJAG which are addressed by separate decisions.
3. The following HQDA FOAs and SSAs:
 - US Army Civilian Personnel Field Agency (W40WAA)
 - Headquarters Services – Washington (W313AA)
 - Resource Services – Washington (W4XEAA)
 - US Army Operations and Plans Support Group (W1YYAA)
 - US Army Command, Control and Support Agency (W241AA)

All other Management Headquarters personnel in HQDA FOA/ SSA/DRU units are covered by other decisions.
A detailed listing of the units and associated decision is attached.

MACOM FOA/SSA/DRU units are not addressed by this exemption and will be subject to other exemption decisions that may apply (i.e., AMSAA will be impacted by the “Army Analysis” decision NOT this decision)

APPENDIX: Military NOT subject to conversion determined by branch/FA (O6’s to be coded “F” – Military Unique Skills/Knowledge):

Air Defense Artillery	Chaplains	Field Artillery	Military Police	Special Forces
Armor	Chemical	Infantry	Logistics	Medical
Aviation	Engineers	Military Intelligence	(multi-function)	

HODA FOA/SSA/DRU units cover by separate decisions by decision:

Decision: Army Analysis Functions

- US Army Manpower Analysis Agency (W1YNAA)
- US Army Cost and Economic Analysis Center (W4PTAA)
- US Army Force Management Support Agency (W4PCAA)
- US Army Center for Army Analysis (W3WCAA)

Decision: Information Management

- US Army Information Management Support Center (W06HAA)
- US Army Single Agency Manager Pentagon (NISA-P) (W0ZDAA)

Decision: Financial Management

- US Army Finance Command (W0NRAA)
- Per Diem Travel and Transportation Allowance Committee (W10TAA)

Decision: Training

- Safety, Security, Support Service – Washington (W06EAA)

Decision: Inspectors General

- US Army Inspectors General Agency (W303AA)

Decision: Installation and Environmental Management

- US Army Environmental Institute (W467AA)
- US Army Installation Support Management Agency (W4YNAA)

Decision: Audit and Internal Review

- US Army Audit Agency (W0NTAA)